State aid Registry - Directorate-General for Competition
European Commission 1049 Bruxelles, BELGIQUE
Ref.: "HT 359 - Consultation on Community Guidelines on State Aid for Environmental Protection"

Proposed additional wording to the Commission draft on Environmental and energy guidelines for state aid 2014-2020

5.7 Aid in the form of reductions in funding support for electricity from renewable sources[1]

(1) The funding of support to energy from renewable sources though charges does as such not target a negative externality and accordingly has no direct environmental effect. However, it may result in higher electricity prices. The increase in electricity prices may be explicit through a specific charge which is levied from electricity consumers on top of the electricity price or indirectly through additional costs faced by electricity suppliers due to obligations to buy renewable energy which are subsequently passed on to their customers, the electricity consumers. A typical example would be the mandatory purchase by electricity suppliers of a certain percentage of renewable energy through green certificates for which the supplier is not compensated.

(2) In principle, all energy consumers should bear the costs of financing renewable energy support. However, some reductions may be needed to secure a sufficient financing base for renewable energy support[2]. In order to avoid that undertakings particularly affected by the funding of renewable energy support are put in a difficult competitive situation, Member States may wish to grant partial compensation for additional costs so as to facilitate the overall funding of support to energy from renewable sources and avoid carbon leakage. With no compensation to particularly affected undertakings, public acceptance of setting up ambitious renewable energy support measures may be limited. On the other hand, if such compensation is too high or awarded to too many electricity consumers, public acceptance for renewable energy support may be equally hampered.

(3) For the assessment of State aid to compensate for the financing of support to energy from renewable sources, the Commission will only apply the conditions set out in this section and in section 5.1.7.

(4) In order to ensure that the aid serves to facilitate the funding of support to energy from renewable sources, Member States will need to demonstrate that the additional costs reflected in higher electricity prices faced by the beneficiaries only result from the support to energy from renewable sources. The additional costs cannot exceed the funding of support to energy from renewable sources[3].

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[1] Internal market legislation (Directive 2009/72/EC of 13 July 2009 concerning common rules for internal market in electricity and repealing Directive 2003/54/EC[1], Regulation (EC) No 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003[1] and the subsequent network codes and guidelines), does not give right to cross-subsidisation of consumers witihn the tarriff regimes.

[2] In order to have a generally high contribution from electricity consumers to the financing of support to energy from renewable sources, some electricity consumers may need to be given a more favourable treatment in particular to prevent carbon leakage.

[3] The most direct way to demonstrate the causal link if by reference to a charge or levy on top of the electricity price which is dedicated to the funding of energy from renewable sources. An indirect way to demonstrate the additional costs would be to calculate the impact of higher net costs for the electricity suppliers from green certificates and calculate the impact on the electricity price assuming the higher net costs are passed on by the supplier.

(5) For companies at risk of carbon leakage, the Commission can apply a simplified approach to assess the necessity and proportionality of the aid. For all other sectors, a more in depth assessment of the necessity, proportionality and conditions of the aid is needed.

Situation 1: Aid to electricity consumers at risk of carbon leakage in the form of reductions in funding support for electricity from renewable sources

(6) In order to ensure that the aid has an environmental effect the aid should be targeted to avoid that without a reduction in the cost burden, certain sectors are at risk of relocating outside the EU. The aid should be limited to sectors that are exposed to a significant risk of carbon leakage due to the funding of support to energy from renewable sources. Accordingly, the aid can only be granted if the sector intensity of trade with third countries is above [10]% and the costs of funding renewable energy support lead to a substantial increase in production costs calculated as a proportion of the gross value added amounting to at least [5]%[4].

[Views are in particular welcome concerning this provision in the public consultation]

(7) Within the eligible sector Member States need to ensure that the choice of beneficiaries is made on the basis of objective and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector or relevant market[5] if they are in a similar factual situation.

(8) The Commission will consider the aid to be proportionate if the following cumulative conditions are met:

(a) The compensation is paid as a lump sum amount. The aid may be paid to the beneficiary in the year in which the costs are incurred or in the following year. If the aid is paid in the year in which the costs are incurred an ex post monitoring mechanism needs to be in place to ensure that any over-payment of aid will be repaid before 1 July of the following year;

(b) The aid beneficiaries pay at least [15]% of the additional costs without reduction until [31.12.2017] and [20%] as of [1.1.2018].

Situation 2: Aid to electricity-intensive consumers in the form of reductions in funding support for electricity from renewable sources in order to increase the environmental protection and energy savings

(9) The Commission considers that State Aid is an appropriate instrument if member states have in place national policies to achieve emissions reductions, energy savings or production of energy from renewable energy sources going beyond Union targets and intend to grand State Aid to achieve those higher targets.

(10) In order to ensure that the aid has an environmental effect the aid should be targeted to avoid that – without a reduction in the financing burden – the higher Member State targets puts firms which are particular affected by the funding support for electricity from renewable sources in a difficult

[4] Similar criteria were used to establish annex II of the ETS State Aid Guidelines (Commission Communication 2012/C 158/04 of 5.6.2012).

[5] As defined in the Commission notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

competitive situation with a risk of of terminating production. Accordingly, the aid can only be granted if the beneficiary or association of beneficiaries are defined as (1) electricity intensive and (2) concludes an agreement between the Member State and the beneficiaries or associations of beneficiaries.

(11) The Commission will consider the aid to be necessary if the following cumulative conditions are met:

(a) Within the eligible sector, Member States need to ensure that the choice of beneficiaries is made on the basis of objective and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector or relevant market if they are in a similar factual situation.

(b) The enterprise shall be electricity intensive. An "electricity-intensive enterprise shall mean a business entity where more than [1.500] MWh is utilised per [1 million] euro value added or where the electricity is utilised for electricity-intensive processes such as mineralogical and metallurgical processes, electrolysis and chemical reduction and where "value added" shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

(12) The Commission will consider the aid to be proportionate , if the following conditions are met:

(a) The compensation is paid as a lump sum amount. The aid may be paid to the beneficiary in the year in which the costs are incurred or in the following year. If the aid is paid in the year in which the costs are incurred an ex post monitoring mechanism needs to be in place to ensure that any over-payment of aid will be repaid before 1 July of the following year;

(b) The tax reduction is conditional on the conclusion of agreements between the Member State and the beneficiaries or associations of beneficiaries whereby the beneficiaries or associations of beneficiaries commit themselves to achieve environmental protection objectives which have the same effect as if beneficiaries pay at least 20% of the national tax or if the EU minimum tax level were applied. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure and satisfy the following conditions:

i the substance of the agreements is negotiated by the Member State, specifies the targets and fixes a time schedule for reaching the targets;

ii the Member State ensures independent and timely monitoring of the commitments concluded in those agreements;

iii those agreements are revised periodically in the light of technological and other developments and stipulate effective penalty arrangements applicable if the commitments are not met.

(c) The aid beneficiaries pay at least [15]% of the additional costs without reduction until [31.12.2017] and [20%] as of [1.1.2018].

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